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FM AMEMBASSY PORT AU PRINCE
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RUEHMN/AMEMBASSY MONTEVIDEO PRIORITY 0426
RUEHSA/AMEMBASSY PRETORIA PRIORITY 2100
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UNCLAS SECTION 01 OF 03 PORT AU PRINCE 000822

SENSITIVE
SIPDIS

STATE FOR WHA/EX AND WHA/CAR, S/CRS, INL FOR KEVIN BROWN,
HEATHER WILD, AND MEAGAN MCBRIDE
SOUTHCOM ALSO FOR POLAD, STATE PASS AID FOR LAC/CAR,
INR/IAA, DS/IP/WHA, WHA/EX PLEASE PASS USOAS

E.O. 12958: N/A
TAGS: [PGOV](#) [PREL](#) [KDEM](#) [ASEC](#) [HA](#)
SUBJECT: CONSTITUTIONAL CONFUSION

REF: A. PORT AU PRINCE 00632
[1](#)B. PORT AU PRINCE 00788

[1](#)1. (U) SUMMARY: On September 14, the last day of the ordinary session, the Parliament voted with over a two thirds majority for amending the Haitian Constitution of 1987. The approved text makes substantial changes to Parliamentary mandates, effectively consolidating the electoral calendar into one national election every five years, and the creation of a Constitutional Council to serve as arbiter and mediator between the Legislative and Executive branches. The amendments ignored some of the proposals made by President Preval, including those to put limits on the Legislative, and did not address the issues of reconstituting the armed forces and complex local government structure. Confusion remains in the approved text on the prohibition of dual nationality. The next legislature will have final say in what amendments are ultimately passed. The Constitutional reform was a partial victory for Preval, though it also highlighted his lack of a loyal majority in the legislature. END SUMMARY.

[1](#)2. (U) Both President Preval and Deputy Stephen Benoit had proposed Constitutional amendments to Parliament on September [1](#)4. The proposed amendments ranged from semantic changes to major structural revisions. Amendments to the prohibition of double nationality, reforming the administration of justice and consolidating the schedule of elections were proposed, along with the creation of a Constitutional Council to address contentions between the Executive and the Legislative branches. More controversially, Preval's proposal strengthened the powers of the President and limited Parliament's independence, for example by giving the President the authority to nominate the Permanent Electoral Council and stripping Parliament of its right to validate newly-elected Parliamentarians.

[1](#)3. (U) On September 14, the final day of the regular session (in effect the last day the Parliament could have pronounced itself on any amendments, according to the Constitution), Parliament voted for an amendment of the Constitution. 71 Deputies and 21 Senators hastily voted for a set of amendments in a very late session, the relevant parts of which are described below. Left out were most controversial issues regarding dual nationality, weakening the powers of the legislature, simplifying local government structure and reconstituting an army.

ELECTIONS

¶4. (U) The main objective of this amendment is to reduce the number and frequency of elections. To this effect, mandates for both Senators and Deputies are set at five years in the approved reform language. In theory, this would allow for one general Parliamentary election and one Presidential election every five years. This revamps the expensive and burdensome electoral schedule under the current Constitution (every four years for Deputies, every two years of one third of Senators, and every five years for the President). However, politicians would still have to agree on how to transition from one system to the other.

¶5. (U) In addition, the likelihood of running second rounds is reduced by foregoing the need for an absolute majority to win an electoral race. Instead, a first candidate's advantage of at least 25 percent of votes over the second most voted candidate would suffice for a win without the need for a second round (this applies to both the Deputies and the President, and a similar system to the Senators).

CONSTITUTIONAL COUNCIL

¶6. (U) A new Constitutional Council (Conseil Constitutionnel in French) is established to decide on the constitutionality of laws and on conflicts between the Powers of the State. The Council is composed of nine members, three each named by the President, the Presidents of the Senate and Chamber of Deputies (together), and the Conseil Superieur du Pouvoir

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Judiciaire.

¶7. (U) Parliament ignored Preval's proposal to have the Constitutional Council receive appeals against the decisions of the Electoral Council. Preval had offered this in exchange for his abolishing the validation process for Parliamentarians, which expectedly no one in Parliament welcomed.

BALANCE OF POWERS

¶8. (U) Parliament is now more limited in its ability to summon members of the Government (interpellation). This procedure now requires the support of one quarter of any Chamber, as opposed to the five members needed under the current Constitution.

¶9. (U) This amendment is the only one that limits Parliament's power over the Executive. Preval had proposed a series of changes, such that the Executive would be allowed to adjourn the Parliament temporarily, that a third attempt at having a quorum would no longer require it, and that the Parliament would no longer validate newly-elected Parliamentarians. These issues were entirely sidelined by the vote.

JUSTICE REFORM

¶10. (U) The amendment ''constitutionalizes'' the already existing Superior Council (Conseil Superieur du Pouvoir Judiciaire). The Council manages and oversees the administration of the justice system. The Court of Cassation remains the highest court of appeal in judicial matters (criminal and civil).

THE ARMY

¶11. (SBU) The Army is maintained only with a change in name to ''L'Armee d'Haiti.'' Many observers in the international community had expected that the armed forces would be

re-invented into a policing force if not abolished. Not one of the three proposals considered the practicality of rebuilding a military, and all simply changed the name.

GENDER EQUITY

¶12. (U) An amendment improves gender equity by imposing a 30 percent quota for women in the public service (theoretically applicable in both elected office and the civil service), a first in the history of Haiti.

DUAL NATIONALITY

¶13. (U) The concept of ''jus soli'' (principle by which citizenship is determined by place of birth) is introduced in the Constitution. News reports and Parliamentarians have indicated that the prohibition on dual nationality has been eliminated. However, confusion remains because the approved text does not eliminate Article 15, which states that exact prohibition.

PRIME MINISTER APPOINTMENT

¶14. (U) The ratification of the appointment of a new Prime Minister now takes place in just one session before the joint Chambers of Parliament, thus effectively reducing the required steps to have a new government in place from four votes to one. This is significant, as in the past every vote required political arrangements.

THE GOOD, THE BAD, AND THE UGLY

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¶15. (SBU) COMMENT. The Parliament surprised many observers by voting on a proposal with less than two weeks of review. This was a very short time, but on the good side, they did not resort to questionable parliamentary maneuvers to avoid the constitutional deadline at the end of the ''regular session.'' Parliamentarians even asserted a great level of independence by rejecting many of Preval's proposals that strengthened the Executive, despite Preval's pressures and demonstrated influence in both Chambers. The next Parliament (the 49th legislature, to be elected probably within a year) has to approve the sections to be amended, and may adopt more of Preval's suggestions. Several insiders have indicated to PolOff that the next Parliament will have the liberty to amend the proposal as it sees fit. This is not Post's reading of the Constitutional amendment procedure. Regardless, the current product of the Constitutional review is a watered down version, given the contentions over the aspects of the proposal that consolidated the powers of the President over those of the Parliament. The debate is likely to continue over the next several months.

¶16. (SBU) However, it is disappointing to many outside observers that the following topics were not addressed by the Parliament's current proposal:

-- Article 15 on the prohibition of double nationality is left unchanged, even though there seemed to be broad consensus that this provision is not beneficial for the country. Of note, Senator Youri Latortue has told United Nations staff that this is a typo, and that an amendment was meant to abolish this prohibition. This only demonstrates the hastiness of the review process.

-- Only semantic change is brought to the section of the Constitution on the Army (see note above).

-- The structure of local government (a system too complicated and expensive for a country like Haiti) is left

intact. Most importantly, no national government ever implemented the structures as delineated by the 1987 Constitution, thus preventing the creation of a Permanent Electoral Council (indirect elections and the creation of inter-departmental councils are a step in the nomination of the CEP).

-- The prohibition on consecutive Presidential mandates remains.

-- The Constitutional amendment process is left as it is, leaving each actor to develop his own understanding of the procedure as witnessed by PolOff.

¶17. (SBU) A legitimate concern voiced by many, including Georges Michel in an op-ed piece in the Le Nouvelliste (himself a contributor to the 1987 Constitution) and Reginald Boulos (an influential business person), is that very little time has been allowed for public debate. Less numerous but more outspoken critics have even denounced a conspiracy by Preval to weaken the democratic institutions. In addition, the political climate has been particularly difficult given the allegations of fraud during the recent Senate elections and the Senate's blatant sidelining of the opposition by validating the contested Senators last week (reftel).

¶18. (SBU) The inclusion of gender equity as a provision in the Constitution should also be welcomed given the near absence of women on the Haitian political scene. Nonetheless, the hastiness of the Constitutional review has left many of the relevant and burdensome aspects of the 1987 document intact. Most importantly, the issues of dual nationality, of a complex and unimplemented local government structure, of a Parliament easily paralyzed by political in-fighting and of the burden of financing an Army or doing away with it must be formally addressed. If not, they will continue to hamper Haiti's efforts to face the most pertinent challenges ahead: economic growth and security. END COMMENT.
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